

**\*E-FILED: May 29, 2012\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARY BASICH,

No. C11-04406 EJD (HRL)

Plaintiff,

**ORDER RE DISCOVERY DISPUTE  
JOINT REPORT #2**

v.

**[Re: Docket No. 55]**

PATENAUDE & FELIX, APC. and CAPITAL  
ONE BANK, (USA), N.A.; DOES 1-10,  
inclusive,

Defendants.

Plaintiff Mary Basich sues for alleged violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. and the California Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq. She claims that defendants improperly attempted to collect a debt from her with respect to a Capital One credit card. Plaintiff says that this is a case of mistaken identity and that she is not the debtor. Reportedly, the debt is owed by one Mary Ryals, who used the alias “Mary Basich.” Plaintiff initially thought Ryals had stolen her identity, but plaintiff now says that she no longer believes that to be the case.

Now before this court is the parties’ Discovery Dispute Joint Report (DDJR) #2, which is deemed suitable for determination without oral argument. Civ. L.R. 7-1(b). Having considered the parties’ respective positions, the court rules as follows:

1           The instant discovery dispute concerns plaintiff's Request for Production No. 24, which  
2 seeks "Electronic files that identify the address, last known contact information, job title, date  
3 of employment of P&F employees that collected on the P&F Account and Capital One  
4 Account." (DDJR #2, Ex. A at 16). Defendant Patenaude & Felix (P&F) apparently has  
5 employment records containing responsive information, but objects to producing them on  
6 several grounds. Among other things, P&F contends that the request is overbroad to the extent  
7 it seeks information about employees whose involvement in the underlying events may have  
8 been limited to purely ministerial tasks, such as data input. Defendant also argues that the  
9 request seeks information protected by its employees' privacy interests and that plaintiff failed  
10 to comply with notice requirements for the production of such records. P&F suggests that  
11 interrogatories are a better means of obtaining the requested information and points out that  
12 such interrogatories have been propounded.

13           None of these objections are addressed by plaintiff here. Instead, DDJR #2, as this court  
14 reads it, simply seeks an order requiring P&F to obtain any responsive electronic files that  
15 reportedly are in the possession of P&F's payroll processor. (DDJR #2 at 3). Apparently, the  
16 nonparty payroll processor came into the picture because P&F said that, upon a search of its  
17 own records for "the category of electronic files requested," it confirmed that "no such category  
18 exists"—whatever that means. (DDJR #2, Ex. A at 18). This court is told that during meet-  
19 and-confer negotiations, defendant stated that its payroll processor had such records. P&F now  
20 says it is not so sure. Plaintiff asserts that P&F has the legal right to demand records from its  
21 payroll processor and that defendant therefore should be compelled to produce documents in the  
22 processor's possession.

23           The record presented to this court is dissatisfying. It is not clear what records the  
24 payroll processor might have. Nor is this court persuaded, at this time, that a nonparty ought to  
25 bear any burden of production when it seems that responsive information might well be  
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1 obtained directly from P&F.<sup>1</sup> Accordingly, plaintiff's request for an order compelling P&F to  
2 produce documents in the possession of the nonparty payroll processor is denied without  
3 prejudice.

4 SO ORDERED.

5 Dated: May 29, 2012

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HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> This court construes P&F's discovery response to mean that it does have employment records containing responsive information. To the extent P&F seems to suggest in DDJR #2 that it has no responsive documents whatsoever, this court is highly skeptical that defendant has no records containing the information sought as to P&F's own employees.

5:11-cv-04406-EJD Notice has been electronically mailed to:

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